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BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

In the Matter of

**Implementation of the
Telecommunications Act of 1996**

**Amendment of Rules Governing
Procedures to Be Followed When
Formal Complaints Are Filed Against
Common Carriers**

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FCC 96-460

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CC Docket 96-238

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

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**COMMENTS
BY COMMUNICATIONS VENTURE SERVICES, INC.
and RICHARD C. BARTEL**

The undersigned submit the following comments on the Notice of Proposed Rulemaking above dated November 26, 1996. Comments begin with the applicable Paragraph number from the NPRM:

27. We agree with the development of a relatively complete record for filing of any complaint, and suggest a more complete record be developed in a dispute resolution procedure before the filing of a formal complaint, but only a good faith settlement attempt certification and record¹ before the filing of an informal complaint(s).²

28. We suggest that a pre-filing dispute resolution be required between the complainant and carrier (initiated by either), or other appropriate parties in interest³, with that process taking no longer than 60-90 days, before a formal complaint may be filed with

¹ Except settlement offer(s) by either party.

² We suggest a prerequisite for informal complaints as well to mitigate the tens of thousand of pending informal complaints now at the Commission. (Reportedly the Common Carrier Bureau alone has about 20,000 pending informal complaints, including letter complaints). The pending informal complainants should be encouraged to engage in settlement discussions immediately, and if they cannot achieve resolution, be required to submit a good faith certification before escalating such a pending informal complaint to the pre-formal level (allowing such even without Commission action on the pending informal complaint).

³ Such a "party in interest" should meet the standards that an Intervenor of right would need to meet. Otherwise, such a party could intervene permissively with the permission of all other parties in interest already involved.

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the Commission (i.e. if the pre-filing resolution takes longer than 90 days from initiation, or a pre-filing resolution is reached, whichever occurs first, then the parties may file a formal complaint). A prerequisite of a good faith settlement effort certification would apply to filing informal complaints at FCC.

29. We suggest that any formal complaints which would require expedited procedures should require the most complete pre-filing record. In such cases a relatively complete record compilation and a pre-filing dispute resolution procedure should be required by regulation, wherever the subject matter of the dispute is within the scope of dispute resolution authorized by Commission Order such as dispute resolution conducted by a Special Government Employee⁴ or a Federal Advisory Committee⁵ and certified to the Commission⁶.

Otherwise, if no such specialized committee of special government employee exists, then some pre-filing procedure⁷ which results in a relatively complete record, which

⁴ See 5 C.F.R. 2634.105(s).

⁵ 5 U.S.C. App. (1988); also see 47 C.F.R. 52.11(c). We believe that any **required** pre-filing formal dispute resolution must use law (Statutes, Regulations, and F.C.C. Order(s)) as decisional principles and not be a consensus process. Informal pre-filing good faith settlement efforts (i.e. arbitration or ADR for private rights) could also use "industry guidelines" as additional decisional principles, including the use of time-limited (no longer than 60-90 days) industry dispute or "issue" resolution procedures, without their having preclusive effects on any formal or informal FCC procedures or other pre-filing resolution entities established by Commission Order (such as Special Government Employees or Federal Advisory Committee resolution processes).

⁶ For example, all **numbering** issues and disputes (i.e. Sec. 251 (e) and 251(a)(3), et seq.) should have a required period of dispute resolution at the North American Numbering Council (NANC), an established FCC Federal Advisory Committee already charged by the Commission with dispute resolution of all numbering issues. (See: Sec. 251 (e) of the 1996 Telecom Act, and Administration of the North American Numbering Plan, CC Docket 92-237, Report and Order, 11 FCC Recd 2588, 2591 (1995), par. 117). The NANC's Dispute Resolution Task Force is currently developing dispute resolution procedures which may also involve encouraging pre-filing industry involvement for a limited time. Richard C. Bartel, an undersigned, is a member of that Task Force and his comments herein are his own personally. Issues or disputes involving allegations of spectrum or numbering warehousing or hoarding should permit intervention of the United States or involved NANP Countries as parties-in-interest at any stage.

⁷ Such as a time limited (60-90 days) ADR or arbitration, but **not** where "public rights" are at issue (i.e.: claims of "ownership" or "property rights" in numbering resources or spectrum (such as "warehousing", "hoarding", "stockpiling", "selling, buying, or releasing for a fee or other consideration"), which the Commission has repeatedly stated are unlawful use(s) of public resources).

(See: In The Matter of Provision of Access for 800, 4 F.C.C. Recd 2824, p. 2846, n.182 (1989); see also Erdman Technologies Corp., Plaintiff, vs. U.S. Sprint Communications Company L.P., 91 Civ. 7602 (PKL), D.C. S.D.N.Y. (Stayed April 9, 1992 pending action by F.C.C. now completed: In the Matter of Erdman Technologies Corp., Complainant, v. U.S. Sprint Communications Co., Defendant, File No. E-94-20, 11 FCC Rcd 6339; 1996 FCC 2811; 3 Comm. Reg. (P & F) 507, Release DA 96-834 (May 29, 1996, Released; Adopted May 16, 1996, Reconsideration pending); also see: Interdec vs. Sprint, FCC E-92-92).

can be supplemented under rules typical for pleading supplementation, should be required. The Commission should exercise a much greater degree of Summary Disposition, even sua sponte, of issues at law or upon stipulated facts in the record, in order to narrow disputes and avoid extensive further procedures.

85. We support the Commission's sanctions for frivolous or delay-imposing filings, including for informal complaints, provided that the Commission also empower its staff to bring a party's Counsel to the U.S. District Court, wherever possible, for parallel sanctions should counsel participate in or encourage frivolous or delaying filings by their client(s). Sanctions on individuals for frivolous or delay-inducing informal complaints should have a higher standard than sanctions against Counsel for an individual or carrier or corporation.

86. We believe that Bureau action is not sufficient to meet the requirements of Section 271, unless all material issues are acted upon by a Commission Order under delegated authority (DA-), and the Order is "final" for purposes of further review of similar Commission Order(s).

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By



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